

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

VYRON WILLIAM KIMBALL, JR., (DECEASED)

Claimant

VS.

EDCO DRILLING COMPANY, INC.

Respondent

AND

LIBERTY MUTUAL INSURANCE CO.

Insurance Carrier

Docket No. 157,431

ORDER

Respondent requests Appeals Board review of an Award of Administrative Law Judge John D. Clark, dated April 12, 1995. This matter came on before the Appeals Board by telephone conference on August 2, 1995.

APPEARANCES

The dependents of the decedent appeared by and through their attorney, Jack Shelton of Wichita, Kansas. The respondent and its insurance carrier appeared by and through their attorney, Douglas D. Johnson of Wichita, Kansas. There were no other appearances.

RECORD & STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Award of Administrative Law Judge.

ISSUES

The Administrative Law Judge granted the dependents of the decedent's claim for death benefits pursuant to K.S.A. 1990 Supp. 44-510b. Respondent appeals raising the single issue of whether decedent's exertion in the performance of his work activities, while employed by the respondent on October 26, 1990, was unusual and thereby precipitated a myocardial infarction which resulted in his death.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record and hearing the arguments of the parties, the Appeals Board finds as follows:

The majority of the essential elements of a workers compensation case are not factually disputed in the case at hand. The decedent had two (2) dependent daughters from a previous marriage living with him and his present wife in Yates Center, Kansas, on the date of his death. Decedent was fifty-four (54) years of age and had been an oil field worker for most of his adult life. At the time of his death, he was employed by the respondent as a driller working in the Tuscaloosa, Alabama area. The cause of decedent's death was myocardial infarction.

In May of 1990 the decedent commenced work for the respondent in Alabama, as a daytime driller. A daytime driller is responsible for the supervision of a crew of three (3) employees, that are referred to as "roughnecks," who perform the manual labor required in a drilling operation. The respondent was drilling methane gas wells at this location. The drilling crew would work seven (7) days per week for twelve (12) hours per day for a two (2) week period, and then be off for seven (7) days. The daytime driller was mainly responsible for the operation of the speed of the drill by utilizing hydraulic hand levers located on the drilling rig. The drilling rig the decedent was working on was a truck-mounted rig that was mobile and could be moved from one drilling site to another. Another responsibility of a driller was to train the "roughnecks" on what and how to perform their jobs, which consisted of showing them how to do the manual labor required in a drilling operation.

After a well was drilled, the truck-mounted rig had to be moved to another drilling site. The moving day in the drilling of gas wells consisted of tearing down the rig, loading the substructure, loading other miscellaneous components of the drilling rig, such as pipe and hoses, into baskets and driving the truck-mounted rig to the other drilling site. Four (4) workers, that were employed by the respondent in Alabama at the same time as the decedent, testified and established that the driller, on moving days, would perform the physical labor along with the other members of the crew. These physical activities consisted of utilizing large wrenches, between twenty-four (24) and thirty-six (36) inches long, weighing up to fifty (50) pounds, along with sledge hammers weighing up to twenty (20) pounds. Pipe and hoses and other drilling rig components that weighed up to two hundred (200) pounds had to be placed in baskets to be transported to the other site. The drilling rig would be required to be moved on a frequency of every week and one-half or sooner. The decedent's drilling rig supervisor, Jon Fessenden, testified that a moving day was the hardest day of drilling a well. The driller on moving day becomes a hand and performs the physical labor required to move the rig.

Although the decedent had been employed as an oil field worker for many years, he had never driven the truck-mounted oil rig before October 26, 1990. James C. Rollings, driller on the night shift for the respondent, testified that on the day of decedent's death he arrived at the new drilling site and observed the decedent in the oil rig truck making a U-turn in an effort to line up the rig with the ramps in order to position the rig for drilling. After Mr. Rollings arrived at the new drilling site, he had a conversation with the decedent, who was joking as usual. Mr. Rollings stayed at the ramps to give decedent directions for backing the rig up to the ramps. The space in which the rig had to be positioned was very tight and it took the decedent two (2) tries to maneuver the rig so it was lined up with the ramps. On the second try, Mr. Rollings saw the decedent had slumped over the steering wheel and was not straightening up. Mr. Rollings then jumped on the rig and saw the decedent was having some type of attack, as he was in convulsions. He then yelled at Jon Fessenden, the rig supervisor also at the new drilling site,

who immediately came over and both of them removed the decedent from the rig. Mr. Fessenden performed CPR on the decedent trying to resuscitate him, which failed, as the decedent died before he was taken to the hospital. Mr. Rollings established that the oil rig truck had power steering that was easy to drive when you were on the highway but would take more exertion when you were not on level ground than the driller expended when operating the drilling hydraulic controls. However, Mr. Rollings testified that immediately prior to the decedent's death, the decedent showed no signs of having any physical problems and he was not exerting any more effort than he normally would have in performing his regular driller job duties.

Two physicians testified in this case, John D. Atkin, M.D., board-certified in family practice and geriatrics, and Joseph P. Galichia, M.D., board-certified cardiologist. Dr. Atkin had treated the decedent for coronary artery disease with angina from April 6, 1987 through July 13, 1989. After Dr. Atkin took a history from the decedent and learned that the decedent had a prior myocardial infarction in 1979, he referred the decedent to a cardiologist, Gregory F. Duick, M.D., in Wichita, Kansas. Dr. Duick performed a right and left heart catheterization, left ventricle angiography and selective coronary arteriography on May 27, 1987. Decedent was referred back to Dr. Atkin who counselled decedent to change jobs and to continue on the medication prescribed by Dr. Duick. During Dr. Atkin's deposition, he testified, after reviewing decedent's autopsy report from the State of Alabama, that he was not surprised decedent died as a result of cardiac vascular disease. Dr. Atkin, when given a hypothetical question that described the conditions that existed at the time of decedent's death as hot, decedent performing work that required extra physical exertion and extreme stress, answered indicating that these conditions would, more likely than not, trigger a fatal heart attack. Dr. Galichia was provided, for his review prior to his testimony, the medical records of Dr. Atkin, Dr. Duick and the autopsy report from the State of Alabama concerning decedent's heart condition. From the history supplied by the respondent, Dr. Galichia opined that decedent died as a result of a myocardial infarction, which occurred while performing heavy labor on an oil rig in pretty hot weather. Dr. Galichia testified, ". . . an individual with heart disease is a hundred times more likely to have a heart attack during or immediately after exertion than he is when he is resting." During Dr. Galichia's testimony, he was asked a hypothetical question that included the fact that the backing of the truck-mounted oil rig was more than the exertion decedent normally performed as a driller. Dr. Galichia was asked assuming that fact was true, is it more probably true than not that the exertion, by decedent, in driving the oil rig, had a causal relationship to his heart attack. Dr. Galichia answered in the affirmative indicating that it was more likely than not that this unusual exertion had a causal relationship to the decedent's fatal heart attack. Additionally, Dr. Galichia testified that, under any circumstances, decedent was at a higher risk than an average person because of his heart disease. If decedent were pushed in any way, physiologically, to perform at a high level of exertion his risk of heart attack would have been unusually increased.

If a worker suffers a disability or death from coronary artery disease, the claim for workers compensation benefits, pursuant to the Kansas Workers Compensation Act, will not be awarded unless it is shown that the exertion of the work necessary to precipitate the disability or death was more than the worker's usual work in the course of the worker's regular employment. K.S.A. 1990 Supp. 44-501(e). This statute is characterized as the "heart amendment." Whether the exertion of the work necessary to precipitate the disability or death was more than the worker's usual work, in the course of his regular employment, is a question of fact to be determined by the trier of fact. See Lentz v. City of Marion, 222 Kan. 169, 563 P.2d 456 (1977). Where it is alleged that claimant's disability is a product of some extreme external force, and not the exertion of claimant's work, the "heart amendment" has no applicability. Dial v. C.V. Dome Co., 213 Kan. 262, 515 P.2d 1046 (1973). The dependents of the decedent also argue that the extreme heat and humidity at the work site was an external force that precipitated decedent's

heart attack. However, Dr. Galichia testified that temperatures of eighty-five to ninety degrees (85-90°) and humidity over ninety percent (90%) would have increased risk of decedent having a heart attack. Dr. Galichia did not express an opinion as to whether the weather conditions, on the date of decedent's death, had a causal relationship to decedent's heart attack, because he had no information, at that time, concerning such weather conditions. Additionally, after Dr. Galichia's deposition was taken, the parties filed a stipulation that showed the temperature at the work site, on the date of decedent's death, was only sixty-three degrees (63°). Accordingly, the Appeals Board finds that the heat and humidity, at the time of the decedent's death, was not an extreme external force that had any causal relationship to decedent's heart attack.

The remaining question in this case is narrowed to whether the exertion required by the decedent to drive and position the truck-mounted oil rig while employed by the respondent on October 26, 1990, was more than the decedent's usual work in the course of his regular employment. The Administrative Law Judge found that the exertion that decedent was expending, backing up and positioning the oil rig, was more than his usual work in the course of his employment with the respondent. He ordered benefits payable to the dependents of the decedent pursuant to K.S.A. 1990 Supp. 44-510b. The standard for determining what is usual exertion for purposes of the "heart amendment" is the work history of the individual worker. Chapman v. Wilkenson Co., 222 Kan. 722, 567 P.2d 888 (1977). Although the evidence established that the decedent had never driven and positioned the truck-mounted oil rig on a moving day, the evidence also established that this was part of the decedent's regular job as a daytime driller and on the date of his death he was performing this job function at the work site of the respondent during regular working hours. When Dr. Galichia testified and opined that there was a causal relationship between the work the decedent was performing on the date of his death, and decedent's fatal heart attack, he based this opinion assuming the fact that the decedent was exercising more exertion backing up the truck-mounted oil rig than he normally exerted in his usual work. The Appeals Board finds that the evidentiary record does not establish that the driving and backing up the truck-mounted oil rig required more exertion from the decedent than his usual job duties. The decedent's work history indicates that, as a driller, he had to operate the drilling rig and supervise the "roughnecks" which required minimal physical exertion. However, decedent's work history also indicates that he was required to train the "roughnecks" which required decedent to perform hard physical labor. James C. Rollings, driller on the night shift, personally observed decedent immediately prior to decedent suffering the heart attack when decedent was backing up the oil rig. Mr. Rollings testified that decedent was talking and looked normal right before he collapsed over the steering wheel. The Appeals Board finds that Mr. Rollings testimony has established that decedent was not exerting more effort than normal when he was backing up and positioning the oil rig.

Additionally, the evidentiary record as a whole has established that the work the decedent had to perform on a moving day was hard, physical labor. On the date of his death, decedent had performed heavy physical labor along with the other crew members in tearing down and moving the oil rig to another work site. A moving day occurred once every week and one-half during the time the decedent was involved with drilling wells for the respondent in Alabama. Therefore, the work that the decedent had to perform on a moving day was usual work performed in the course of decedent's regular employment. The Appeals Board finds that the exertion that the decedent was exercising at the time of his heart attack, while positioning the truck-mounted oil rig, was not more than he usually exercised in performing the physical labor required to tear down and move the oil rig for the respondent on moving day. Accordingly, the Appeals Board finds that the dependents of the decedent have failed to prove that decedent's death arose out of and in the course of his employment with respondent.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated April 12, 1995, is reversed and the dependents of the decedent, Vyron William Kimball, Jr., are denied an award of compensation benefits against the respondent, Edco Drilling Company, and its insurance carrier, Liberty Mutual Insurance Company, for the death of the decedent on October 26, 1990.

Fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid direct as follows:

Mary P. Gaffey, CSR	
Deposition of Ron Gulick	Unknown
Don K. Smith & Associates	
Deposition of James Clinton Rollings	\$236.25
Deposition of Roy Nelson	\$236.25
Deposition of Joseph P. Galichia, M.D.	\$208.50
Karen Starkey, CSR	
Deposition of John D. Atkin, M.D.	Unknown
Deposition of Judith Kimball	\$163.00
Barber and Associates	
Transcript of Regular Hearing	\$60.30
Deposition of Jon Fessenden	\$361.40

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jack Shelton, Wichita, Kansas
Douglas D. Johnson, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director